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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/158655

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 22, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the Petitioner FoodShare benefits for July 2014.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pang Thao-Xiong, Income Maintenance Specialist Advanced  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was part of his wife's FoodShare case. (Exhibit 2, pg. 5)

3. On June 5, 2014, the Office of Inspector General received information that a person using Petitioner's name had an open Food Stamp case in [REDACTED] (Testimony of Ms. Thao-Xiong; Exhibit 2, pg.1)
4. On June 6, 2014, the agency sent Petitioner's wife a Notice of Proof Needed requesting verification of Petitioner's residency in Wisconsin. The due date for that verification was June 16, 2014. (Exhibit 2, pgs. 9-12)
5. Petitioner's wife did not provide the requested verification by the June 16, 2014 due date. (Testimony of Ms. Thao-Xiong; Exhibit 2, pg. 8)
6. On June 17, 2014, the Petitioner called the agency to report that someone had stolen his identity in [REDACTED]. The agency worker informed the Petitioner that he could not receive benefits in Wisconsin until the [REDACTED] case closed. (Exhibit 2, pg. 8)
7. Also on June 17, 2014, the agency sent the Petitioner's wife a notice indicating that her benefits would be ending effective July 1, 2014, because she failed to provide the requested verification and because Petitioner was receiving benefits in another state. (Exhibit 2, pgs. 13-18)
8. On June 18, 2014, the agency sent Petitioner's wife another notice indicating that her FoodShare benefits would be \$126 per month and that the Petitioner would no longer be enrolled in the FoodShare program because he was getting benefits in another state. (Exhibit 2, pgs. 19-24)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 30, 2014. (Exhibit 1)
10. On July 2, 2014, the agency must have verified Petitioner's residency in Wisconsin, because it contacted the [REDACTED] agency and asked it to close the case under Petitioner's name, which it did. (Exhibit 2, pg. 8)
11. On July 3, 2014, the agency sent Petitioner's wife a notice indicating that effective August 1, 2014, the Petitioner would be restored to her FoodShare case and that she would be receiving \$266 per month in FoodShare benefits. (Exhibit 2, pgs. 25-30)
12. An individual, named [REDACTED], applied for and received Food Stamps in [REDACTED], in two cases, simultaneously, using his own name and the Petitioner's name. (Exhibit 5; testimony of Investigator Amanda [REDACTED])
13. [REDACTED] and the Petitioner had lived together in [REDACTED] 10-12 years ago. (Testimony of Petitioner)

### DISCUSSION

Petitioner filed an appeal because the agency excluded him from his wife's FoodShare case in July 2014. It is the agency's position that it acted correctly because the Petitioner was receiving benefits in [REDACTED].

A person cannot be a member of more than one food unit and one FoodShare group in the same month. *Foodshare Wisconsin Handbook §3.4.1*; 7 CFR §273.3(1) However, in the case at hand, the agency has not shown that the Petitioner was receiving duplicate benefits during the time in question.

The photographs taken by the [REDACTED] County EBT system, clearly show that someone, who is not the Petitioner, opened two Food Stamp cases in [REDACTED] using Petitioner's name and the name of [REDACTED] [REDACTED] (Exhibit 5) Thus, the preponderance of the credible evidence supports a finding that someone stole the Petitioner's identity in order to receive Food Stamps in [REDACTED]

Because there is insufficient evidence to prove the Petitioner was the person actually receiving benefits in [REDACTED], the agency has not met its burden to prove that it correctly removed the Petitioner from his wife's Foodshare case.

I note that there is the question of whether the agency was also justified in removing the Petitioner from his wife's case, because she failed to provide the requested verification.

Normally, under FoodShare Wisconsin Handbook §1.2.1.2, an agency may close a FoodShare case when a recipient is given proper notice, but fails to provide verification. However, FoodShare Wisconsin Handbook §7.4.1.1 allows the restoration of benefits, so long as the under-issuance was not caused by the recipient.

In the case at hand, Petitioner's wife failed to provide the requested proof, but even if Petitioner's wife had provided proof of residency, the agency still would not have restored Petitioner's July benefits, because the fraudulent [REDACTED] case did not close until August 2014. (See Exhibit 2, pg. 8) As such, the root cause of the termination of Petitioner's benefits was the [REDACTED] case, which the current record shows was opened fraudulently by [REDACTED].

Ultimately, the under-issuance of benefits in July was caused by [REDACTED]'s duplicity. It was not caused by the Petitioner. Thus, under FoodShare Wisconsin Handbook §7.4.1.1, the agency may restore the Petitioner's benefits for July 2014.

### **CONCLUSIONS OF LAW**

The agency did not correctly deny the Petitioner Foodshare benefits for July 2014.

**THEREFORE, it is**

### **ORDERED**

The agency shall restore Petitioner's FoodShare benefits to his wife's case effective July 1, 2014. The agency shall take all administrative steps necessary to complete this task within 10-days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

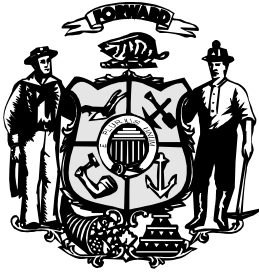
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of August, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 13, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability  
[diane.peterson@wisconsin.gov](mailto:diane.peterson@wisconsin.gov)